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**JUL 06 2004**

FILE:

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Applicant:

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Cindy N. Gomez for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The applicant initially filed a Form I-821, Application for Temporary Protected Status, on August 4, 2000. On March 6, 2001, the Director, Nebraska Service Center, denied that application, finding that the applicant had not established that he was eligible for late registration. The applicant filed a timely appeal and additional evidence. The Administrative Appeals Office (AAO) dismissed that appeal on May 31, 2002, finding that the applicant had not submitted evidence to establish that he qualified for late registration. On June 6, 2003, the applicant filed a new Form I-821, indicating that it was an application for annual registration/re-registration, and that TPS had previously been granted. On July 21, 2003, the Director, Nebraska Service Center, discussed the procedural history of the first application and informed the applicant that this June 2003 application would be treated as an application for late registration. On August 19, 2003, the director denied this application. A timely appeal was filed, and the matter is now before the AAO on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish that he was eligible for late registration. The director also found that the applicant had failed to establish his continuous physical presence in the United States during 1999 and 2001 of the requisite time period for this application.

On appeal, the applicant stated that he has resided in the United States since 1994, and maintained that he had submitted sufficient proof to establish his continuous physical presence for the requisite timeframe. The applicant stated that "financial, illness, and many problems in Honduras" had prevented his marriage to a TPS registrant from taking place earlier.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f) (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
- (2) During any subsequent extension of such designation if at the time of the initial registration period:

- (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
  - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
  - (iii) The applicant is a parolee or has a pending request for reparole; or
  - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2005, upon the applicant's re-registration during the requisite time period.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed this application with the Immigration and Naturalization Service, now CIS, on June 6, 2003.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The director denied the August 2000 application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish he was eligible for late registration.

Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on June 6, 2003. Since the initial application was denied on March 6, 2001, and the appeal was dismissed by the AAO on May 31, 2002, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse/child of an alien currently eligible to be a TPS registrant, and he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On July 21, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on August 19, 2003. On appeal, the applicant stated that he had known his wife since they were in Honduras together and that "a Judge will recognize our partnership as a husband and wife even thou [sic] we are not married yet."

The applicant submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. The applicant has not submitted evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). While the evidence of record confirms that the applicant's wife was granted TPS, the record also shows that the applicant was not married until May 24, 2003. In order to be eligible for late registration, the qualifying relationship must have existed during the initial registration period. 8 C.F.R. § 244.2(f)(2). Since the applicant, during the initial registration period, was not the spouse of an alien currently eligible to be a TPS registrant, he is not eligible for late registration. Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed, and the application must be denied for this reason.

The second issue in this proceeding is whether the applicant has established his continuous physical presence in the United States since January 5, 1999.

As stated above, the applicant was requested on July 21, 2003, to submit evidence establishing his physical presence in the United States. In response, the applicant submitted the following documentation:

1. A Photocopy of the applicant's Certificate of Marriage, Cook County, Illinois, dated May 24, 2003;
2. A Photocopy of his wife's Employment Authorization Card, indicating she is a TPS registrant;
3. Photocopies of the applicant's Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, for 1997, 1998, 1999, 2000;
4. Gigante Express receipts dated 30/3/98, 16/5/98, 18/6/2000, 30/4/2000, 10/4/2000;
5. State of Illinois Birth Certificates for children born on September 21, 1999, and on July 9, 2001;
6. A letter from the Payroll Department of Electrical Windings, Chicago, Illinois, indicating the applicant worked there from September 27, 1994 until February 28, 1997;
7. A letter from [REDACTED] Manager, Clingan Steel, Melrose, Park, Illinois, attesting to the applicant's employment;
8. Handwritten rental receipts dated periodically in 1999, 2001, 2002, and 2003; and,
9. Pay stubs for 2001, 2002 and 2003.

The director determined that the evidence submitted indicated that the applicant had been continuously present in the United States for the years 2000, 2002, and 2003, but did not establish continuous physical presence in 1999 and 2001. Evidence in the record, including that submitted with the first Application for Temporary Protected Status, reflects that the applicant submitted Gigante Express receipts in his name, dated April 1999, September 1999 and November 1999. The address provided on these receipts match the applicant's address as provided on the IRS Form W-2 for 1999. In addition, the applicant provided a copy of his child's birth certificate, indicating the child's birth in late September 1999.

On appeal, the applicant stated that his wife's doctor indicated the child was conceived in early January 1999. It is noted that the birth certificate denotes the applicant as the father of the child. Taken as a whole, the evidence provided establishes that the applicant was continuously present in the United States in 1999.

For the year 2001, however, evidence in the record includes: a Form I-797C, Receipt Notice dated April 9, 2001 pertaining to the applicant's appeal; the Form I-290B, Notice of Appeal, dated March 29, 2001; and, pay stubs from [REDACTED] for the pay periods ending March 3, 2001 and March 10, 2001, indicating year-to-date earnings of \$3,672. The applicant presented handwritten rental receipts for March and July 2001; the director

noted these were not acceptable evidence. It is noted that the address provided on these rental receipts cannot be verified against other corroborative documentation in the file. The applicant also submitted a birth certificate for his child born in early July 2001. The applicant did not submit his IRS Form W-2 for the year 2001, or any other evidence that indicates his presence in the United States from April 2001 throughout the remainder of that year.

The applicant has not submitted any evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the period from April 2001 to December 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on this ground will also be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed.